

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MARTY JOE BANGHART, Petitioner, vs. DARIN YOUNG, Warden and the Attorney General of the State of South Dakota, Respondents.	4:21-CV-04066-KES ORDER FOR SERVICE
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Petitioner, Marty Joe Banghart, has filed a pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court directs the petition in this case be served and that a response be filed.

Mr. Banghart has also filed a motion for appointment of counsel. Docket No. 2. There is no recognized constitutional right under the Sixth Amendment for the appointment of counsel in habeas corpus cases. Hoggard v. Purkett, 29 F.3d 469, 471 (8th Cir. 1994). Habeas actions are civil in nature, so the Sixth Amendment right to counsel applicable in criminal proceedings does not apply. Id. The court does, however, have discretion to appoint counsel if the interests of justice so require or if an evidentiary hearing will be held. See 18 U.S.C. § 3006A(a)(2)(B). The court will not appoint counsel at this juncture of the proceedings. This case is not legally or factually complex and the court is confident petitioner can present his issues himself at this point. Should an evidentiary hearing become necessary, the court will appoint counsel.

Based upon the record,

IT IS ORDERED that:

- (1) the Clerk of Court is directed to serve upon the respondents and the Attorney General of the State of South Dakota a copy of the petition and this Order;
- (2) respondents will file and serve a response to the petition within thirty (30) days after receipt of this Order;
- (3) petitioner may file a reply within fourteen (14) days after service of the respondent's answer/response;
- (4) respondents shall cause to be filed all pertinent state court records, including any trial transcripts; and
- (5) petitioner's motion for appointment of counsel (Doc. 2) is denied.

DATED this 15th day of April, 2021.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Veronica L. Duffy", is written over a horizontal line.

VERONICA L. DUFFY

United States Magistrate Judge